

1 that Mr. Edward Rick was the authorized spokesperson for the
2 site, did you not, for the Lancaster site?

3 A At the time I made the phone call I'm not sure that
4 I knew or remembered that Mr. Rick was the authorized
5 spokesperson.

6 Q But you had the information right in the application
7 to that effect, did you not?

8 A The information was in the application, yes.

9 Q Now, did -- when you placed the call and asked --
10 you say you asked for the manager?

11 A Yes.

12 Q And did someone then come on the line purporting to
13 be the manager?

14 A Yes.

15 Q And did you ask that person's name when he came on
16 the line?

17 A I don't recall if I asked his name or not.
18 Sometimes people give you their name whenever they pick up the
19 phone.

20 Q Did -- do you recall the person giving you his name
21 when he came on the phone?

22 A I don't recall whether or not the person gave me his
23 name when he came on the phone.

24 Q Now, with respect to your call to Lebanon, when you
25 placed that call who did you ask for?

1 A The manager.

2 Q And did you ask by name or by title?

3 A By title.

4 Q And did you know the name at the time you asked?

5 A I did not.

6 Q But you acknowledge now that, that that person is

7 Mr. Barry March? You now understand that to be the case?

8 A Yes.

9 Q That he is the Manager of the Quality Inn at

10 Lebanon?

11 A Yes.

12 Q The General Manager?

13 A It says General Manager in this -- in the

14 application, yes.

15 Q But your testimony is that you don't know whether

16 Mr. Barry March is the individual to whom you spoke on the

17 occasion in question?

18 A That's correct, yes.

19 Q And, again, why did you not ask for Mr. March by

20 name?

21 A At the time I made the phone call I'm not sure that

22 I knew or remembered his name.

23 Q And when the person came on the line -- let me back

24 up. You testified you asked for the manager. What then

25 happened after you asked to speak to the manager?

1 A I recall that a man came on the phone who said he
2 was the manager.

3 Q And did that person identify himself?

4 A I don't recall if he identified himself by name.

5 Q And did you ask for the name?

6 A I do not recall asking for his name.

7 Q Now, would you turn to TBF Exhibit 228 please which
8 is in Volume 3C? Do you have that?

9 A Yes.

10 Q Do you recognize what this document is?

11 A Yes.

12 Q Would you tell us what it is, please?

13 A It's a phone log that I recovered of my phone calls
14 in October 1991.

15 Q And, and this was produced in this proceeding by
16 Glendale Broadcasting? Do you know that?

17 MR. EMMONS: I think we can stipulate to that, but

18 --

19 MR. STAUBLE: So stipulated.

20 MR. EMMONS: Thank you.

21 BY MR. EMMONS:

22 Q Now, do the calls that are listed on this phone log
23 reflect telephone calls placed from the offices of Raystay or
24 Waymaker in Carlisle, Pennsylvania?

25 A Yes.

1 Q And you see the circle around two of the calls in
2 the upper portion of the page?

3 A Yes.

4 Q Do you know who placed that circle there?

5 A I believe I did.

6 Q And you did -- when did you do that?

7 A Sometime in the preparation of records that you
8 requested.

9 Q Okay. During the course of this proceeding, in
10 other words?

11 A Yes.

12 Q That circle wasn't on there at the time you found
13 this record in your file?

14 A No, it wasn't.

15 Q Now, the -- hold exhibit -- hold that exhibit in
16 front of you and go back, if you would, to TBF Exhibit 203,
17 page 4.

18 A Yes.

19 Q Do you see on TBF Exhibit 3, page -- excuse me, TBF
20 Exhibit 203, page 4, do you see the telephone number 717-394-
21 0637?

22 A Yes.

23 Q And turning to TBF Exhibit 228, the telephone log,
24 do you see that that telephone number corresponds to the
25 telephone number for the Lancaster call which is one of the

1 two circled calls?

2 A Yes.

3 Q Okay. Now, turn to TBF Exhibit 205, page 4, please.

4 A Yes.

5 Q And do you see that the middle of the page for TBF
6 Exhibit 205 there is the telephone number 717-273-6771?

7 A Yes.

8 Q And looking at TBF Exhibit 228, do you see that that
9 telephone number corresponds to the Lebanon telephone number
10 indicated as one of the two circled calls on TBF Exhibit 228?

11 A Yes.

12 Q Now, in searching your telephone records when you,
13 when you came up -- found the telephone record in question
14 here, were these two calls, that is the one to Lebanon and the
15 one to Lancaster reflected on TBF Exhibit page 228, were they
16 the only two calls made to those two numbers that you could
17 find?

18 A I only looked in September, October, November,
19 December of 1991 and in that time period those were the only
20 two that I found.

21 Q Well, you don't have any, any recollection of making
22 calls to, to these numbers or these people in some other time
23 frame from the September through December of 1991 time frame,
24 do you?

25 A I don't recall making any such calls.

1 Q So we can be fairly confident that what we've got
2 here in TBF Exhibit 228 is the universe of calls that you made
3 to the Lebanon and the Lancaster site owners?

4 A It would appear so, yes.

5 Q And are these two calls indicated by the circle on
6 the exhibit and dated October 10, 1991, these are the calls to
7 which you testified in the last few minutes?

8 A Yes.

9 Q Now, you testified that you understand that each of
10 those calls was of a duration of one minute and is that -- is
11 the basis of that understanding the information over toward
12 the right-hand column on what appears to be the duration of
13 calls where there's a 1:00 indicated for each of those two
14 calls?

15 A Yes.

16 Q Now, in looking at the, at the other entries on that
17 same page, does it, does it appear to you that the billing
18 increments for calls by this telephone company are six second
19 increments? Can you tell by looking at the, at the duration
20 -- various durations of the call?

21 A I -- six second increments you say?

22 Q Yes. Well, for example, look at the, the second one
23 from the top. Do you see that that appears to be 30 seconds?

24 A I'll say that I called the phone company to try to
25 figure out how they were billing things for these proceedings

1 and I did not get an answer back from them.

2 Q In any event, would you agree that what this record
3 appears to show with respect to the two Lancaster -- I mean,
4 the, the one Lancaster and the one Lebanon call is that the --
5 that those calls, each of them, lasted no longer than one
6 minute?

7 A It appears to show that, yes.

8 Q Now, if you did not have this telephone record
9 available to you, would you have any independent recollection
10 of the duration of these calls?

11 A Yes.

12 Q And what would be your recollection?

13 A They seemed like they were four or five minute
14 calls.

15 Q I see. But the record appears to show otherwise?

16 A That's correct.

17 JUDGE CHACHKIN: Let's take a five minute recess.

18 (Whereupon, a brief recess was taken from 11:45 a.m.
19 until 11:55 a.m.)

20 MR. COHEN: Back on the record, Mr. Emmons.

21 BY MR. EMMONS:

22 Q Mr. Gardner, just to clarify one point in my mind,
23 the time period when you went through documents in the
24 production phase of this case and in that process came across
25 this telephone record which is TBF Exhibit 228, that occurred

1 to your recollection -- is it your recollection that occurred
2 in July or perhaps August of 1993, the summer of 1993?

3 A Summer of 1993, yes.

4 Q And was that after your -- the declaration that you
5 submitted in this case in June of 1993?

6 A I believe it was, yes.

7 Q Now, let me take you back to the, to the telephone
8 call to Lancaster, the Lancaster site. I'd like you to relate
9 exactly what was said in that call and let's start with you
10 dialed the telephone and I presume that a receptionist or
11 someone answered. Is that correct?

12 A This is Lancaster?

13 Q Correct.

14 A Yes. I believe that's how it occurred.

15 Q And you've testified that when the receptionist
16 answered you asked -- you said that you would like to speak to
17 the manager? Is that right?

18 A I believe that's how it occurred, yes.

19 Q And what did the receptionist say in response to
20 that?

21 A I don't recall her specific response if there was
22 any.

23 Q Do you recall whether she had to -- was it a woman
24 or a man?

25 A This is Lancaster?

1 Q Right.

2 A I believe both receptionists were females.

3 Q All right. Talking now about Lancaster. When you

4 asked to speak to the manager did she ask your name?

5 A I don't recall if she asked my name or not.

6 Q Had you volunteered your name before you asked for

7 the manager?

8 A My normal practice on the telephone is to say my

9 name when I say hello.

10 Q Did the receptionist ask you what you were calling

11 about?

12 A I don't recall if she asked me what I was calling

13 about or not.

14 Q All right. When you completed your colloquy with

15 the receptionist then what happened?

16 A This is Lancaster?

17 Q Yes. All of the questions are going to refer to

18 Lancaster --

19 A Yeah, I know.

20 Q -- until I change the --

21 A I'm trying to keep them clear in my mind. A man

22 came on the phone in response to my request for a manager.

23 Q And what did the man say?

24 A I don't recall what he said specifically.

25 Q Did you identify yourself to him?

1 A My normal response to speaking to somebody on the
2 phone is to say my name when I say hello.

3 Q And did you identify your company or who you were
4 calling on behalf of?

5 A I don't recall if I stated the company I was calling
6 for or not.

7 Q Did you explain the background for your call?

8 A I don't really recall the specific conversations I
9 had with the manager.

10 Q Well, do you recall telling the manager about an
11 earlier visit he had received, perhaps two or three years
12 earlier, from someone inquiring about the possible use of the
13 site?

14 A I, I don't recall specifics of the, the conversation
15 with the manager.

16 Q Do you recall anything you said to the manager?

17 A I don't recall what I said specifically to the
18 manager.

19 Q Well, do you -- let me see if I can refresh your
20 recollection. Did you, did you ask the manager if, if his
21 plant was still available as a transmitter site for a full
22 power television transmitter?

23 A I recall at the end of the conversation I felt that
24 the site was available for use as a transmitter site.

25 Q But you don't -- you can't recall what it was in the

1 conversation that led you to have that impression?

2 A Specifically I can't recall the exact words, no.

3 Q Do you recall whether you told this person that an
4 engineer was going to come to be visiting the site?

5 A I don't recall that I used those specific words, but
6 at the end of the conversation I was left with the impression
7 that the manager would be receptive to having an engineer come
8 visit the site.

9 Q Did you ask this person who the engineer should,
10 should check in with when he came to the site?

11 A I don't recall asking that question.

12 Q Did you ask for directions to the site?

13 A I don't recall asking for directions to the site.

14 Q Do you recall anything specifically that the person
15 on the other end of the telephone said to you?

16 A I don't recall anything specifically that the
17 manager said to me.

18 Q So you don't recall then the manager telling you --
19 you don't recall words telling you that the site was still
20 available for a transmitter site?

21 A I don't recall the specific words. However, at the
22 end of the conversation I felt that his communication to me
23 was that the site was still available.

24 Q Did you explain to him the, the type of structure
25 you were talking about in terms of the height and the weight,

1 for example?

2 A I don't recall discussing specifics of the use for
3 the site.

4 Q So you -- and I take it then you don't recall
5 explaining the need for both an antenna and a transmitter?

6 A I don't recall discussing the need for both an
7 antenna and a transmitter.

8 Q Now, what, what lease terms did you discuss? Again,
9 we're, we're still on the Lancaster site here.

10 A I recall that at the end of the conversation I had
11 the impression that the site, excuse me, site was still
12 available for use as a, a transmitter site.

13 Q Well, apart from the general question of
14 availability of the site, my question is what terms, what
15 lease terms, do you recall discussing with this person?

16 A The terms that I discussed with the person were
17 whether or not the site was still available.

18 Q So you did not discuss rent, for example?

19 A I don't recall discussing rent.

20 Q Did you discuss the duration of the lease?

21 A I don't recall discussing the duration of the lease.

22 Q Did you discuss the amount of space that would be
23 needed for an antenna?

24 A I don't recall discussing the amount of space that
25 would be needed for an antenna.

1 Q Did you discuss the amount of space needed for the
2 transmitter?

3 A I don't recall discussing the amount of space needed
4 for a transmitter.

5 Q Did you discuss the location of the antenna?

6 A Did -- okay. I don't recall discussing the exact
7 location of an antenna other than it would be at the site.

8 Q Did you, did you discuss with this person location
9 of the transmitter?

10 MR. SCHAUBLE: Again, Your Honor, to clarify, does
11 counsel mean the specific location of the transmitter within
12 the site or --

13 MR. EMMONS: That's what I mean.

14 MR. GARDNER: I don't recall discussing an exact
15 location of the transmitter within the site.

16 BY MR. EMMONS:

17 Q Did you discuss insurance requirements as a term of
18 lease?

19 A I don't recall discussing insurance requirements as
20 a term of lease.

21 Q Did you discuss access rights under the lease?

22 A I don't recall discussing access rights under the
23 lease.

24 Q Did you discuss maintenance obligations?

25 A I don't recall discussing maintenance obligations

1 under the lease.

2 Q Did you discuss termination rights under the lease?

3 A I don't recall discussing termination rights under
4 the lease.

5 Q When you concluded this conversation with this
6 person, did you expect that you would be talking to this
7 person again?

8 A I don't recall that I made any determination as to
9 whether or not I would be discussing anything with this person
10 again.

11 Q At the conclusion of the conversation did you know
12 this person's name?

13 A I don't recall if I knew this person's name or not.

14 Q Now, would you turn to your direct written
15 testimony, Glendale Exhibit 209, please, page 5?

16 A Page 5.

17 Q Page 5.

18 A Yes.

19 Q And in the -- about the middle of the page you say,
20 "I then called the Ready-Mixed Concrete Company." Let me stop
21 at that point and have you confirm that the Ready-Mixed
22 Concrete Company is the Lancaster site. Is that correct?

23 A It is.

24 Q All right. "I spoke to somebody, I do not remember
25 their name, who identified themselves as a manager. The person

1 said that Mr. Riley could visit and that they could have
2 further discussions about using the site as an antenna site."
3 And my question, Mr. Gardner, is the word "they" in the last
4 sentence that I quoted, who did that -- who does that refer
5 to?

6 A Ready-Mixed Concrete.

7 Q Just Ready-Mixed or Ready-Mixed and Mr. Riley?

8 A It looks like I was referring to the "they" being
9 Ready-Mixed Concrete and Mr. Riley.

10 Q All right. So then the negotiations referred to in
11 Exhibit 1, that is in the application filed with the FCC, was
12 really referring to possible future negotiations between
13 Trinity and Ready-Mixed, was it not?

14 MR. SCHAUBLE: Objection.

15 JUDGE CHACHKIN: Overruled.

16 MR. GARDNER: No.

17 BY MR. EMMONS:

18 Q Well, you've just told us, haven't you, that, that
19 the word "they" in the sentence I quoted from your direct
20 testimony referred to Ready-Mixed and Mr. Riley? Correct?

21 A Yes.

22 Q And that they could have further discussions about
23 using the site? Correct?

24 A Yes.

25 Q And Mr. Riley was Trinity's engineer? Right?

1 A Yes.

2 Q He was not an employee of Raystay, was he?

3 A No.

4 Q He was not an agent of Raystay?

5 A No.

6 Q And Raystay didn't authorize him to negotiate on
7 behalf of Raystay, did they?

8 A No.

9 Q Now, with respect to your telephone call to the
10 Lebanon site --

11 A Yes.

12 Q That's the Quality Inn in Lebanon.

13 A Yes.

14 Q I want you to relate exactly what was said in that
15 conversation and I'll start by indicating that you said that
16 you placed the call and someone answered. We'll call it a
17 receptionist. What happened when the receptionist answered?

18 A My general recollection is that I asked for the
19 manager.

20 Q And what did the receptionist say?

21 A I don't recall her specific response, but I was
22 transferred to someone who came on who identified himself as
23 being the person -- as being the manager.

24 Q Now, before that person came on the line did the
25 receptionist ask you name?

1 A I don't recall if she asked me my name.

2 Q Did you give your name?

3 A My normal method of making a phone call includes
4 saying my name when I say hello.

5 Q Was this receptionist also a woman?

6 A I believe she was, yes.

7 Q Did she ask you what you were calling about?

8 A I don't recall if she asked me what I was calling
9 about or not.

10 Q Now, when the next person came on the line, what did
11 you say?

12 A I don't recall the specifics of the conversation.

13 Q So, again, you don't recall whether you identified
14 yourself by name to that person?

15 A I don't recall whether or not I did. However, my
16 normal procedure would have been to identify myself when I say
17 hello.

18 Q And you don't recall whether you identified your
19 company?

20 A I don't recall whether or not I identified my
21 company.

22 Q And you don't recall whether you explained the
23 background for your call?

24 A I don't recall whether or not I explained the
25 background for the call.

1 Q And you don't recall asking this person if his
2 facility was still available for use as a transmitter site?

3 A At the end of the conversation I was left with the
4 very strong impression that the site was still available as a
5 transmitter site and this was the person to talk to about
6 lease negotiations in the future.

7 Q Did the person -- you know, we're talking about
8 Lebanon now.

9 A Yeah.

10 Q Did the person seem to know what you were talking
11 about when you, when you started in to speak to this person?

12 A My general -- I don't remember the specifics of the
13 conversation and I, I don't remember whether he was very
14 familiar with the specifics of what the site was proposed for
15 or not.

16 Q Did you tell this person that an engineer would be
17 coming to visit --

18 A I believe that I said something to that effect since
19 at the end of the phone call I was under the impression it was
20 okay for Mr. Riley to make his visit.

21 Q Did you give the name of the engineer to this
22 person?

23 A I don't recall that I gave the name of the engineer
24 to this person.

25 Q Did you say when the engineer would be visiting?

1 A I don't recall specifically when I said the engineer
2 would be visiting.

3 Q Did you ask this person who the engineer should
4 check in with when he arrived?

5 A I don't recall asking this person who the engineer
6 should check in with when he arrived.

7 Q Did you ask for directions to, to this location?

8 A I don't recall asking for directions to the
9 location.

10 Q Can you tell us anything specifically that the --
11 that this person on the other end of the line said to you in
12 this conversation?

13 A I don't recall any specifics of the conversation.

14 Q So you don't recall -- again, you don't recall
15 explaining to this person the type of structure that you were
16 talking about?

17 A I don't recall explaining to this person the type of
18 structure I was calling about.

19 Q And what lease terms do you -- did you discuss with
20 this person?

21 A I remember that at the end of the conversation that
22 this person left me with the impression that the site was
23 available for use.

24 Q But, again, I take it you had, you had no discussion
25 about rent?

1 A I don't recall any discussions about rent.

2 Q You had no discussion about how long the lease would
3 be?

4 A I don't recall any discussions about how long the
5 lease would be.

6 Q You had no discussion about the amount of space that
7 you were going to be leasing?

8 A I don't recall any discussions about the amount of
9 space that we would be leasing.

10 Q You had no, no discussion about the location, that
11 is the particular location, of the facilities that you would
12 be installing there under the lease?

13 A I don't recall any discussion about the particular
14 location where we would be placing facilities under a lease.

15 Q And you had no discussion about what the lease would
16 say about insurance requirements?

17 A I don't recall any discussions about what the lease
18 would say about insurance requirements.

19 Q Or access rights?

20 A I don't recall any discussion about what the lease
21 would say about access rights.

22 Q Or maintenance obligations?

23 A I don't recall any discussion about what the lease
24 would say about maintenance obligations.

25 Q Or rights of parties to terminate the lease?

1 A I don't recall any discussion about what the lease
2 would say about rights of parties to terminate the lease.

3 Q Now, at the conclusion of this conversation with
4 this person in Lebanon, did you expect that you'd -- you would
5 be talking to this person again?

6 A I don't recall whether or not I made a determination
7 of whether or not I would be talking to this person again.

8 Q Now, with respect to both of these conversations,
9 Lancaster and Lebanon -- I'm referring to the telephone
10 conversations of one minute in duration -- did you take notes
11 of either of those conversations?

12 A I don't recall making any notes.

13 Q Did you make any memorandum to the file?

14 A I don't recall making any memorandum to the file.

15 Q So if either one of these people told you their name
16 you didn't make any record of it?

17 A I don't recall making any record of either of these
18 gentlemen's names.

19 Q Or their telephone numbers?

20 A I don't recall making any note of their telephone
21 numbers.

22 Q Or the substance of what was said in the
23 conversations?

24 A I don't recall making any note of the substance of
25 what was said in the telephone conversations.

1 Q Did you tell anyone at Raystay that you had had
2 these discussions with these two persons?

3 MR. SCHAUBLE: Is there a time frame to that
4 question?

5 MR. EMMONS: At or about October 1991.

6 MR. GARDNER: I believe at some point in time I had
7 -- I told Lee Sandifer about these discussions.

8 BY MR. EMMONS:

9 Q When did you tell him?

10 A I don't recall exactly when.

11 Q What did you tell him?

12 A I don't recall exactly what I told him.

13 Q What do you recall about such discussion with Mr.
14 Sandifer?

15 A I recall that I told him that I had made contact
16 with the representatives of the owners of the sites and that
17 the sites seemed available.

18 Q Is that all you told him?

19 A That's all that I can recall that I told him.

20 Q Do you know now of any documents that reflect the
21 substance of, of these two conversations you had with the site
22 owners apart from --

23 A These exhibits.

24 Q -- apart from documents prepared for the purpose of
25 this proceeding?

1 A Right. I'm not aware of any notes that I made. I
2 think I've forgotten your question. I'm sorry.

3 Q Well, the question was do you know now of any
4 documents of any kind, apart from documents such as written
5 testimony that were prepared for this proceeding, that reflect
6 the substance of your one conversation with the Lebanon site
7 representative and your one conversation with the Lancaster
8 site representative?

9 A I'm not aware of any such documents.

10 Q Now, would you turn to TBF Exhibit 246, please?

11 MR. EMMONS: Your Honor, I'm -- this is a slightly
12 different line of questioning. It would be a convenient time
13 to break for lunch if you'd want to do that.

14 JUDGE CHACHKIN: We could do that until 1:30.

15 (Whereupon, a recess was taken for lunch from 12:25
16 p.m. until 1:30 p.m.)

17

18

19

20

21

22

23

24

25

1 A F T E R N O O N S E S S I O N

2 MR. EMMONS: We're on the record?

3 JUDGE CHACHKIN: Yes, we're back on the record.

4 BY MR. EMMONS:

5 Q Mr. Gardner, would you turn to Glendale Exhibit 209,
6 page 5, please? That's your direct testimony.

7 A Yes.

8 Q And focusing on the last sentence of the first
9 paragraph on the page, "The person" -- let me back up and said
10 that we're referring here to the -- your conversation with the
11 Ready-Mixed Concrete Company person. "The person said that
12 Mr. Riley could visit and that they could have further
13 discussions about using the site as an antenna site." My
14 question to you is do you recall as we sit here today that the
15 person on the other end of the telephone said that to you?

16 A I recall that that was my understanding at the end
17 of the phone conversation.

18 Q That was your, that was your understanding or your
19 impression? Is that right?

20 A Yes.

21 Q But you don't have a recollection that the person
22 said that to you?

23 A Not using those exact words.

24 Q Well, let me ask you then why in your direct
25 testimony you used that word?

1 A Do you mean in this or --

2 Q Yes, in that, in Glendale Exhibit 209.

3 MR. SCHAUBLE: May I ask which word?

4 MR. EMMONS: The word "said", the word "said" in the
5 sentence that I quoted.

6 MR. GARDNER: That's, that's the way I said it in
7 this exhibit or statement?

8 BY MR. EMMONS:

9 Q Yes, I understand. My question is why?

10 A That was the way I perceived it at the time that
11 this statement was created.

12 Q Would you turn, Mr. Gardner, to TBF Exhibit 246?
13 That's in Volume 3D.

14 A Yes.

15 Q Page 2. This is your declaration submitted in this
16 proceeding dated June 3, 1993 and I invite your attention to
17 the second to the last sentence of the middle paragraph. No.
18 Strike that. I'm sorry. To the, to the last paragraph on the
19 page, second sentence, that says -- it's referring to the
20 statement in Exhibit 1 about lease negotiations with the site
21 owners and you say starting on the third line, "I believe that
22 my telephone calls with the representatives can fairly be
23 described as preliminary lease negotiations."

24 A Okay. I must, I must have missed your --

25 Q I'm sorry.